

(27,154)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 399.

CHARLES K. HOGAN, APPELLANT,

VS.

WILLIAM H. O'NEILL, CHIEF OF POLICE OF THE CITY OF
EAST ORANGE, NEW JERSEY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF NEW JERSEY.

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1 UNITED STATES OF AMERICA,
District of New Jersey:

CHARLES K. HOGAN, Petitioner,

VS.

WILLIAM H. O'NEILL, Chief of Police of East Orange, New Jersey,
Respondent.

Transcript of Record on Appeal.

Pursuant to the appeal and praecipe for record on appeal, I certify that the following papers were filed, proceedings had, opinion given, final order entered, appeal taken and allowed and assignment of errors filed in the above entitled proceeding:

2 In the District Court of the United States for the District of
New Jersey.

In the Matter of the Second Application of CHARLES K. HOGAN for
a Writ of Habeas Corpus.

Second Petition for Writ of Habeas Corpus.

(Filed March 1, 1919.)

To the Honorable Thomas G. Haight, one of the Judges of the District Court of the United States in and for the District of New Jersey:

Your petitioner, Charles K. Hogan, respectfully states that he is a citizen of the United States and of the State of New Jersey residing at 278 William Street in the City of East Orange; that he is unlawfully restrained of his liberty by William H. O'Neill, Chief of Police of said city of East Orange, by virtue of a warrant of extradition issued by Honorable Walter E. Edge, Governor of the State of New Jersey, purporting to act under the authority of the constitution and statutes of the United States; that said warrant recites that the executive of Massachusetts has transmitted to the Governor of New Jersey certain papers charging your petitioner with conspiring to steal the property, moneys and chattels of the Market Trust Company, a banking corporation; that the executive of Massachusetts has made demand on the Governor of New Jersey for the rendition of your petitioner as a fugitive from justice, and the Governor of New Jersey has ordered that your petitioner be delivered to one, James R. Claflin upon the demand of said executive of Massachusetts.

3 And your petitioner further shows that the papers forwarded by the executive of Massachusetts to the Governor of

New Jersey upon the application for said warrant include one indictment only by the grand jury of Suffolk County, Massachusetts, in words following:

"COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

At the Superior Court Begun and Holden at the City of Boston, within and for the County of Suffolk, for the Transaction of Criminal Business, on the First Monday of February, in the Year of Our Lord One Thousand Nine Hundred and Nineteen.

The Jurors for the Commonwealth of Massachusetts, on their oath present that Charles K. Hogan and Luther R. Hanson on the eighteenth day of August in the year of our Lord one thousand nine hundred and sixteen conspired together to steal the property, moneys, goods and chattels of the Market Trust Company, a banking corporation legally established and existing.

A true Bill.

SAMUEL S. REINSTEIN,
Foreman of the Grand Jury.

J. C. PELLETIER,
District Attorney.

A true copy.

Attest:

JOHN R. MANNING, *Clerk.*"

That an affidavit of the residence of your petitioner in Massachusetts by one James R. Claffin, is also included in said papers, and is as follows:

"COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

I, James R. Claffin of the City of Boston in the County of Suffolk and said Commonwealth, on oath depose and say that Charles K. Hogan who stands charged by indictment with the crime of conspiracy as is more fully set forth in the papers hereto annexed, has fled from the limits of said Commonwealth and is a fugitive from justice. And I further depose that at the time of the commission of said crime he was in the city of Boston in the County of Suffolk in said Commonwealth, and that at the same time and previous thereto he was a resident of said city of Boston; that he fled from said Commonwealth of Massachusetts on or about the eighteenth day of August A. D. 1916; that he is not now within the limits of the Commonwealth, but, as I have reason to believe, he is now in East Orange in the State of New Jersey.

The grounds of my knowledge are the following telegram:

East Orange, N. J., Feb. 15.

Michael H. Crowley, Supt. of Police, Boston:

Charles K. Hogan in custody send warrant and certified copy of indictment.

WILLIAM H. O'NEILL,
Chief of Police.

JAMES R. CLAFLIN.

Then personally appeared the above-named James R. Claflin before me and made oath that the foregoing affidavit by him subscribed is true, this eighteenth day of February A. D. 1919.

JOHN P. MANNING,
*Clerk of the Superior Court for the Transaction
of Criminal Business within and for the
County of Suffolk."*

That said Claflin is a stranger unknown to your petitioner and has no personal knowledge of your petitioner's residence or movements.

And your petitioner alleges that the Governor of New Jersey did not grant a hearing to your petitioner before issuing his warrant.

And your petitioner states that in no paper presented to the Governor of New Jersey is it charged that your petitioner did any act whatever in furtherance of said alleged conspiracy, and further alleges that he has resided openly and continuously with his family at 278 William Street in said city of East Orange ever since October, 1915; that he did not reside in the State of Massachusetts at any time in the year 1916; that he did not, on the 18th day of August, 1916, or at any time or place conspire with said Luther R. Hanson,

5 or anyone whomsoever, to steal any property, money, goods or chattels of said Market Trust Company, or any person or corporation; that he entered into no conversation with said Hanson on said subject at any time; that he was not in the State of Massachusetts in August, 1916, but was there earlier in the Summer of 1916 for a day and night; that he was in said State on two occasions in the Fall of 1917, once to visit his parents who live there and once to attend the funeral of a friend, and that he did not, on either of said occasions, have any business transactions of any kind with said Luther R. Hanson; that he has not at any time conversed with said Luther R. Hanson in said State of Massachusetts about said Market Trust Company, its property, moneys, goods, chattels or affairs.

And your petitioner further alleges that he has been informed that the Grand Jury of Suffolk County, Massachusetts, has presented indictments charging that your petitioner and said Hanson stole money of said Market Trust Company on and between August 18th, 1918, and January 16th, 1919.

And your petitioner says that he received at the City of New York in the State of New York, and not elsewhere, money from said Hanson on several occasions between said dates for investment in market

securities listed on the New York Stock Exchange, but that your petitioner believed that all of said money was the sole property of said Luther R. Hanson.

And your petitioner further alleges that he never stole any of the money of said Market Trust Company jointly with said Hanson, or otherwise, and that he was not in the State of Massachusetts at or about said time, and alleges and charges that the said conspiracy indictment has reached back to a date exactly two years from the earliest date when it is charged that money of said company was stolen
6 in said larceny indictments so as to include a time within which it was possible to show that your petitioner had been in said State of Massachusetts, and that said conspiracy indictment was found as a means of procuring the extradition of your petitioner so that he could be brought to Massachusetts and tried upon the larceny indictments, well knowing he could not be extradited on the larceny indictments because he had not been in the State of Massachusetts at or about the times said larceny is alleged to have been committed.

That your petitioner has not fled from the justice of the State of Massachusetts, is not a fugitive from its justice, and is unlawfully detained and deprived of his liberty, contrary to the Constitution and Laws of the United States, under color of the authority of the United States, in erroneous reliance upon Section 2 of Article 4 of said Constitution, and Section 5278 of the Revised Statutes of the United States.

That there are annexed hereto and made a part hereof the affidavits of thirty persons corroborating the facts alleged as to the residence of petitioner openly and continuously in the City of East Orange since May, 1915 and at 278 Williams Street since October, 1915.

Wherefore, your petitioner prays that a writ of habeas corpus may issue out of this Court, directed to the said William H. O'Neill, Chief of Police of the City of East Orange, New Jersey, commanding him to bring your petitioner into this Court, there to abide such order and judgment as may be awarded.

CHARLES K. HOGAN.

7 STATE OF NEW JERSEY,
County of Essex, ss:

Charles K. Hogan, being duly sworn, says that he has read the foregoing petition by him subscribed and knows the contents thereof, and that the same are true.

CHARLES K. HOGAN.

Sworn to before me this 1st day of March, 1919.

CHARLES S. CHEVRIER,
Deputy Clerk.

8 STATE OF NEW JERSEY,
 County of Essex, ss:

Alvah N. Lamb, being duly sworn, deposes and says: that he lives at 58 New Street in the City of East Orange, State of New Jersey.

Deponent states that he has been personally acquainted with one Charles K. Hogan, who lives with his wife and family at 278 William Street (formerly number 222) in the City of East Orange, since the year 1910, and that from July, 1914, to May, 1915, said Hogan resided at the same address as deponent, 215 West 23rd Street, New York, N. Y., and that he knows of his own knowledge that said Hogan has lived openly and continuously with his family since said time in the City of East Orange.

ALVAH N. LAMB.

Sworn to before me this 27th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

9 STATE OF NEW JERSEY,
 County of Essex, ss:

William T. Reade, being duly sworn, deposes and says: that he is the proprietor of the Marlborough Hotel at 45 North Arlington Avenue, in the City of East Orange, State of New Jersey, and that he personally resides at said Hotel and did reside there during the year 1915 up to the present time.

Deponent states that he is personally acquainted with one Charles K. Hogan, who came to live at the Marlborough Hotel on May 10th, 1915, with his wife and daughter, and deponent knows of his own knowledge that said Hogan and his wife and daughter lived openly and continuously at said Marlborough Hotel from the date aforesaid until September 6th, 1915, and that, immediately thereafter said Hogan with his wife and daughter moved to 278 William Street (formerly number 222), in the City of East Orange, State of New Jersey.

WM. T. READE.

Sworn to before me this 26th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

10 STATE OF NEW JERSEY,
 County of Essex, ss:

John H. Blake, being duly sworn, deposes and says: that he resides at 208 Bellevue Avenue, in the City of Montclair, State of New Jersey; that he is, and since October 1st, 1915, has been the Agent of the house and lot known as 278 William Street, City of East

Orange, State of New Jersey; that he has known Charles K. Hogan since said first day of October, 1915; that on said first day of October, 1915, said Charles K. Hogan leased said property and has since continuously lived there with his family, paying the rent regularly to affiant each month since the first day of October, 1915, to and including the month of February, 1919.

JOHN H. BLAKE.

Sworn to before me this 27th day of February, 1919.

[SEAL.]

G. M. DEWITT,
Notary Public, N. J.

11 STATE OF NEW JERSEY,
County of Essex, ss:

Carrie A. Schrack being duly sworn, deposes and says; that she owns the house and lots known as 286 William Street, in the City of East Orange, State of New Jersey, and that she has lived there for twenty-five years or more up to and including July 12th, 1917, when she leased said house and moved to 67 Rosedale Avenue, in Maplewood, New Jersey where she now resides.

Deponent states that she has known one Charles K. Hogan of 278 William Street, East Orange since he moved into the house at said address in October 1915, and that said Hogan has lived there openly and continuously with his wife and family since October, 1915.

Deponent states that her house is just two doors to the west of Hogan's house, which has always been known as number 222 until very recently when the number was changed by the City of East Orange to 278, and that between October, 1915 and July 12th, 1917 she was a constant visitor at said Hogan's home, having occasion to see the said Hogan almost daily and during this said period has stayed and slept at Hogan's house on many occasions, and especially during the months of October 1916 to July 12th, 1917 has slept at Hogan's house nightly and has stayed there for weeks at a time. Since deponent moved to Maplewood, N. J. in July, 1917 and up to the present time she has been a constant caller at Hogan's home, and during this period has also stayed and slept at said house on many occasions, and frequently for weeks at a time.

12 Wherefore deponent has had every occasion to observe that said Hogan was continuously living at 278 William Street, East Orange, New Jersey with his wife and family since October, 1915, and that he was a man devoted to his wife and children and of good character and morals, and that he lived a modest life.

CARRIE A. SCHRACK.

Sworn to before me this 27th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

13 STATE OF NEW JERSEY,
 County of Essex, ss:

Dr. Winifred D. Banks, being duly sworn, deposes and says: that she lives at 298 Main Street, in the City of East Orange, State of New Jersey.

Deponent states that she has been personally acquainted with one Charles K. Hogan, who lives with his wife and family at 278 William Street (formerly number 222), in the City of East Orange, since said Hogan moved into the house at the address mentioned in October, 1915 and for four or five months prior thereto; that she has been since said time the family physician of said Hogan and knows of her own knowledge that said Hogan has lived openly and continuously with his family since said time at the address mentioned.

WINIFRED D. BANKS, M. D.

Sworn to before me this 27th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,

Notary Public, New Jersey.

14 STATE OF NEW JERSEY,
 County of Essex, ss:

Clement Knecht being duly sworn, deposes and says: I reside at 67 Rosedale Avenue, Maplewood, N. J., and have lived at 226 William Street, East Orange, N. J. from February 21st, 1913 to November 1st, 1916, and have known intimately one Charles K. Hogan of 278 William Street (formerly number 222) East Orange, since he moved into the house at said address in October, 1915.

During the time that I lived at 226 William Street, I have seen Hogan almost daily, either on the trains going to business in New York City or coming home in his company, or in New York City during the day, or at his home in the evenings as I was a constant caller at his house. I know of my own knowledge that Hogan has lived openly and continuously with his wife and family at 278 William Street since October, 1915, when he moved into the house. Ever since I moved to Maplewood on November 1st, 1916 and up to the present time I have been a constant visitor at Hogan's house and have been in touch with him almost daily. I have always observed that Hogan was a devoted man to his wife and family and lived a quiet and modest life, and that he is a man of good character and morals.

CLEMENT KNECHT.

Sworn to before me this 28th day of February, 1919. *

[L. S.]

LOUIS G. BEEKMAN,
Notary Public of New Jersey.

15 STATE OF NEW JERSEY,
County of Essex, ss:

E. Tracy Lantermann, being duly sworn, deposes and says: that he resides at 161 North Maple Avenue, in the City of East Orange, State of New Jersey.

Deponent states that he is at the present time, and has been for some years past, the Postmaster of the City of East Orange; that he has known Charles K. Hogan since he moved to East Orange, New Jersey, in October, 1915; that he knows of his own knowledge that the said Charles K. Hogan has lived openly and continuously with his wife and two children at 278 William Street (formerly number 222), in the City of East Orange, State of New Jersey.

Deponent states that during all the time that he has known said Hogan he has had occasion to pass his house at least six times a day.
E. TRACY LANTERMANN.

Sworn to before me this 27th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

16 STATE OF NEW JERSEY,
County of Essex, ss:

Carl Dressel, being duly sworn, deposes and says: that he resides at 187 Shepard Avenue in the City of East Orange, State of New Jersey.

Deponent states that he is a letter-carrier connected with the United States Post Office of the City of East Orange; that he knows one Charles K. Hogan of 278 William Street (formerly number 222). City of East Orange, and knows of his own knowledge that said Hogan moved into the house at said address in October, 1915, and has lived openly and continuously with his wife and family at that address since October, 1915, and up to the present time.

Deponent states that he has been the carrier assigned to the route on which said Hogan lives, and has been working on said route, since October, 1915, and has delivered the mail to said Hogan and his family three times a day since October, 1915, and up to January 31st, 1917.

CARL DRESSEL.

Sworn to before me this 27th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

17 STATE OF NEW JERSEY,
County of Essex, ss:

James H. Edgar, being duly sworn, deposes and says: that he lives at 13 Jones Street, in the City of East Orange, State of New Jersey.

Deponent states that he has known one Charles K. Hogan, of 278 William Street (formerly number 222), City of East Orange, since said Hogan moved into the house at that address with his wife and family in October, 1915, and deponent knows of his own knowledge that said Hogan has lived openly and continuously with his wife and family at the aforesaid address since October, 1915.

Deponent states that he is a police officer of the City of East Orange on the route on which said Hogan lives.

JAMES H. EDGAR.

Sworn to before me this 26th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,

Notary Public, New Jersey.

18 STATE OF NEW JERSEY,
 County of Essex, ss:

Martin Costello, being duly sworn, deposes and says: that he resides at 246 Shepard Avenue, in the City of East Orange, State of New Jersey.

Deponent states that he is in the ice business and that in the month of February, 1916, he started to deliver ice to the home of one Charles K. Hogan of 278 William Street (formerly number 222), City of East Orange, and thereafter and until the present time has continued to deliver ice daily at said home of said Hogan and deponent therefore knows of his own knowledge has been living openly and continuously with his wife and family at said address since the month of February, 1916.

MARTIN COSTELLO.

Sworn to before me this 27th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,

Notary Public, New Jersey.

19 STATE OF NEW JERSEY,
 County of Essex, ss:

Robert Barnes, Jr., being duly sworn, deposes and says: that he resides at 8 Clinton Street, in the City of Bloomfield, State of New Jersey.

Deponent states that, in October, 1915, he was a member of the firm of Robert Barnes & Sons, conducting a grocery store at the corner of Park Avenue and North Clinton Street, in the City of East Orange, State of New Jersey, and that he has known one Charles K. Hogan, of 278 William Street (formerly number 222), of the City of East Orange, since he moved into said address in October, 1915, and that said Hogan commenced to trade at deponent's store very early in the month of October, 1915, and has continued to trade at said store up to and until the time deponent severed his connection with the firm of Robert Barnes & Sons, in March, 1918, and during all that time

deponent knows of his own knowledge that said Hogan has lived with his family openly and continuously at the aforesaid address.
ROBERT BARNES, JR.

Sworn to before me this 27th day of February, 1919.

[SEAL.]

FRANCIS GILBERT,
Notary Public, N. J.

20 STATE OF NEW JERSEY,
County of Essex, ss:

Max Naiman, being duly sworn, deposes and says: that he lives at 163 North Parkway, in the City of East Orange, State of New Jersey.

Deponent states that, in the summer of 1915, he owned and conducted a newspaper store at 344 Main Street, in the City of East Orange, State of New Jersey, and that he has known one Charles K. Hogan, of 278 William Street (formerly number 222), of the City of East Orange, since he moved into said address in October, 1915, and that said Hogan commenced to trade at deponent's store early in the Summer of 1915 and has continued to trade at said store up to and until the present time, and during all that time deponent knows of his own knowledge that said Hogan has lived with his family openly and continuously at the aforesaid address.

MAX NAIMAN.

Sworn to before me this 27th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

21 STATE OF NEW JERSEY,
County of Essex, ss:

Joseph D. Ward, being duly sworn, deposes and says: that he resides at 282 William Street, in the City of East Orange, State of New Jersey; that Charles K. Hogan resides at 278 William Street, in the City of East Orange, State of New Jersey; said address being the house next door to deponent's.

Deponent states that he has known the said Charles K. Hogan ever since he moved next door to him in East Orange, which was some time in October, 1915.

Deponent knows of his own knowledge that said Hogan has resided openly and continuously with his wife and two children at 278 William Street, in the City of East Orange, State of New Jersey, since October, 1915; that deponent has been a frequent visitor at the home of said Hogan and has had occasion to observe the manner in which said Hogan has lived with his wife and family, and states that all of his time away from his business has been spent at home with his family.

JOSEPH D. WARD.

Sworn to before me this 26th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

22 STATE OF NEW JERSEY,
 County of Essex, ss:

Ethel A. Knecht being duly sworn, deposes and says; that she has lived at 226 William Street, in the City of East Orange, State of New Jersey for many years, up to November 1st, 1916 when she moved to Maplewood, N. J. where she now resides, at 67 Rosedale Avenue.

That she has known one Charles K. Hogan of 278 William Street (formerly number 222) East Orange, N. J. since he moved into the house at that address in October, 1915, and knows of her own knowledge that said Hogan has lived at 278 William Street openly and continuously with his wife and family since October, 1915. That during all this time and up to the present she has been a frequent visitor at Hogan's house, has spent many days and evenings at Hogan's home, and has known said Hogan intimately. That she has had occasion to observe that said Hogan pursued a quiet and modest life and was a man devoted to his wife and family.

ETHEL A. KNECHT.

Sworn to before me this 27th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,

Notary Public, New Jersey.

23 STATE OF NEW JERSEY,
 County of Essex, ss:

Clarence H. Erkenbrach, being duly sworn, deposes and says: that he lives at 257 William Street, in the City of East Orange, State of New Jersey.

Deponent states that he has been personally acquainted with one Charles K. Hogan, who lives with his wife and family at 278 William Street (formerly number 222), in the City of East Orange, since said Hogan moved into the house at the address mentioned in October, 1915, and that he knows of his own knowledge that said Hogan has lived openly and continuously with his family since that time at the address mentioned.

CLARENCE H. ERKENBRACH.

Sworn to before me this 27th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,

Notary Public, New Jersey.

24 STATE OF NEW JERSEY,
 County of Essex, ss:

William C. McCutcheon, being duly sworn, deposes and says: that he lives at 114 North Munn Avenue in the City of East Orange, State of New Jersey.

Deponent states that he has been personally acquainted with one Charles K. Hogan, who lives with his wife and family at 278 Wil-

William Street (formerly number 222) in the City of East Orange, since said Hogan moved into the house at the address mentioned in October, 1915, and that he knows of his own knowledge that said Hogan has lived openly and continuously with his family since that time at the address mentioned.

WM. CHARLES McCHUTCHEON.

Sworn to before me this 26th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

25 STATE OF NEW JERSEY,
County of Essex, ss:

S. Carl Downs, being duly sworn, deposes and says: that he lives at 259 William Street in the City of East Orange, State of New Jersey.

Deponent states that he has known one Charles K. Hogan, of 278 William Street (formerly number 222), City of East Orange, since said Hogan moved into the house at that address with his wife and family in October, 1915, and deponent knows of his own knowledge that said Hogan has lived openly and continuously with his wife and family at the aforesaid address since October, 1915.

S. CARL DOWNS.

Sworn to before me this 26th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

26 STATE OF NEW JERSEY,
County of Essex, ss:

Christopher A. Finneran, being duly sworn, deposes and says: that he lives at 252 William Street, in the City of East Orange, State of New Jersey.

Deponent states that he has known one Charles K. Hogan, of 278 William Street (formerly number 222), City of East Orange, since said Hogan moved into the house at that address with his wife and family in October, 1915, and deponent knows of his own knowledge that said Hogan has lived openly and continuously with his wife and family at the aforesaid address since October, 1915.

CHRISTOPHER A. FINNERAN.

Sworn to before me this 27th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

27 STATE OF NEW JERSEY,
County of Essex, ss:

Bernard A. Finneran, being duly sworn, deposes and says: that he lives at 20 Cambridge Street, in the City of East Orange, State of New Jersey.

Deponent states that he has known one Charles K. Hogan, of 278 William Street (formerly number 222), City of East Orange, since said Hogan moved into the house at that address with his wife and family in October, 1915, and deponent knows of his own knowledge that said Hogan has lived openly and continuously with his wife and family at the aforesaid address since October, 1915.

BERNARD A. FINNERAN.

Sworn to before me this 27th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,

Notary Public, New Jersey.

28 STATE OF NEW JERSEY,
County of Essex, ss:

John D. Dautel, being duly sworn, deposes and says: that he lives at 92 Roosevelt Avenue, in the City of East Orange, State of New Jersey.

Deponent states that he has been personally acquainted with one Charles K. Hogan, who lives with his wife and family at 278 William Street (formerly number 222) in the City of East Orange, since said Hogan moved into the house at the address mentioned in October, 1915, and that he knows of his own knowledge that said Hogan has lived openly and continuously with his family since that time at the address mentioned.

JOHN D. DAUTEL.

Sworn to before me this 27th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,

Notary Public, New Jersey.

29 STATE OF NEW JERSEY,
County of Essex, ss:

Louis E. Shaw, being duly sworn, deposes and says: that he resides at 179 North Parkway in the City of East Orange, State of New Jersey.

Deponent states that he has known one Charles K. Hogan, of 278 William Street (formerly number 222) in the City of East Orange, since said Hogan moved into the house at that address with his wife and family in October, 1915, and that he knows of his own knowledge that said Hogan has lived openly and continuously at the aforesaid address with his wife and family since October, 1915.

LOUIS E. SHAW.

Sworn to before me this 26th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,

Notary Public, New Jersey.

30 STATE OF NEW JERSEY,
County of Essex, ss:

Charles F. Baines, being duly sworn, deposes and says: that he lives at 183 North Parkway, in the City of East Orange, State of New Jersey.

Deponent states that he has been personally acquainted with one Charles K. Hogan, who lives with his wife and family at 278 William Street (formerly number 222), in the City of East Orange, since said Hogan moved into the house at the address mentioned in October, 1915, and that he knows of his own knowledge that said Hogan has lived openly and continuously with his family since that time at the address mentioned.

CHARLES F. BAINES.

Sworn to before me this 27th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

31 STATE OF NEW JERSEY,
County of Essex, ss:

Willard C. Greene, being duly sworn, deposes and says: that he lives at 179 North Parkway, in the City of East Orange, State of New Jersey.

Deponent states that he has known one Charles K. Hogan, of 278 William Street (formerly number 222), City of East Orange, since said Hogan moved into the house at that address with his wife and family in October, 1915, and deponent knows of his own knowledge that said Hogan has lived openly and continuously with his wife and family at the aforesaid address since [October, 1915]• January, 1916.

2/26/19.

O. K.

W. C. G.

WILLARD C. GREENE.

Sworn to before me this 26th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

32 STATE OF NEW JERSEY,
County of Essex, ss:

Arthur Purnell, being duly sworn, deposes and says: that he lives at 179 North Maple Avenue, in the City of East Orange, State of New Jersey.

Deponent states that he has known one Charles K. Hogan, of 278 William Street (formerly number 222), City of East Orange, since said Hogan moved into the house at that address with his wife and family in October, 1915, and deponent knows of his own knowledge

that said Hogan has lived openly and continuously with his wife and family at the aforesaid address since October, 1915.

ARTHUR PURNELL.

Sworn to before me this 26th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

33 STATE OF NEW JERSEY,
County of Essex, ss:

Ernest A. Bonfield, being duly sworn, deposes and says: that he lives at 181 North Parkway in the City of East Orange, State of New Jersey.

Deponent states that he has known one Charles K. Hogan, of 278 William Street (formerly number 222), City of East Orange, since said Hogan moved into the house at said address, with his wife and family, in October, 1915.

Deponent knows of his own knowledge that said Hogan has lived openly and continuously with his wife and family at the address mentioned since October, 1915, and has had numerous occasions to observe that said Hogan lived a quiet and very modest life during all the years he has known him.

ERNEST A. BONFIELD.

Sworn to before me this 26th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

34 STATE OF NEW JERSEY,
County of Essex, ss:

Otto Vogt, being duly sworn, deposes and says: that he lives at 94 Roosevelt Avenue, in the City of East Orange, State of New Jersey.

Deponent states that he has been personally acquainted with one Charles K. Hogan, who lives with his wife and family at 278 William Street (formerly number 222), in the City of East Orange, since said Hogan moved into the house at the address mentioned in October, 1915, and that he knows of his own knowledge that said Hogan has lived openly and continuously with his family since that time at the address mentioned.

OTTO VOGT.

Sworn to before me this 27th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

35 STATE OF NEW JERSEY,
County of Essex, ss:

Ethel F. Delahunty, being duly sworn, deposes and says: that she lives at 185 North Parkway, in the City of East Orange, State of New Jersey.

Deponent states that she has known one Charles K. Hogan, of 278 William Street (formerly number 222), City of East Orange, since said Hogan moved into the house at that address with his wife and family in October, 1915, and deponent knows of her own knowledge that said Hogan has lived openly and continuously with his wife and family at the aforesaid address since October, 1915.

ETHEL F. DELAHUNTY.

Sworn to before me this 20th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

36 STATE OF NEW JERSEY,
County of Essex, ss:

Bernard J. Delahunty, being duly sworn, deposes and says: that he lives at 185 North Parkway, in the City of East Orange, State of New Jersey.

Deponent states that he has known one Charles K. Hogan, of 278 William Street (formerly number 222), City of East Orange, since said Hogan moved into the house at that address with his wife and family in October, 1915, and deponent knows of his own knowledge that said Hogan has lived openly and continuously with his wife and family at the aforesaid address since October, 1915.

BERNARD J. DELAHUNTY.

Sworn to before me this 20th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

37 STATE OF NEW JERSEY,
County of Essex, ss:

Leonard O. Lindsay, being duly sworn, deposes and says: that he lives at 249 William Street, in the City of East Orange, State of New Jersey.

Deponent states that he has known one Charles K. Hogan, of 278 William Street (formerly number 222), City of East Orange, since said Hogan moved into the house at that address with his wife and family in October, 1915, and deponent knows of his own knowledge that said Hogan has lived openly and continuously with his wife and family at the aforesaid address since October, 1915.

LENARD O. LINDSAY.

Sworn to before me this 26th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

38 STATE OF NEW JERSEY,
County of Essex, ss:

Charles S. Finneran, being duly sworn, deposes and says: that he lives at 119 North Arlington Avenue, in the City of East Orange, State of New Jersey.

Deponent states that he has known one Charles K. Hogan, of 278 William Street (formerly number 222), City of East Orange, since said Hogan moved into the house at that address with his wife and family in October, 1915, and deponent knows of his own knowledge that said Hogan has lived openly and continuously with his wife and family at the aforesaid address since October, 1915.

CHAS. S. FINNERAN.

Sworn to before me this 27th day of February, 1919.

[SEAL.]

CLEMENT KNECHT,
Notary Public, New Jersey.

39 In the District Court of the United States for the District of
New Jersey.

In the Matter of the Second Application of CHARLES K. HOGAN for
a Writ of Habeas Corpus.

Return of Respondent.

(Filed March 1, 1919.)

William H. O'Neill, the respondent herein, in answer to the writ brings before the court the said Charles K. Hogan, and respectfully shows that the cause of his detention is the warrant of the Governor of the State of New Jersey following:

"State of New Jersey, Executive Department.

The Governor of the State of New Jersey to the sheriffs, under sheriffs and constables of the several counties of said state, Greeting:

Whereas the executive authority of the State of Massachusetts hath transmitted to the executive authority of the State of New Jersey papers as required by the statutes of the United States, certified to be authentic, by which it appears that Charles K. Hogan is charged with the crime of conspiracy to steal the property, moneys and chattels of the Market Trust Company, a banking corporation legally established and existing, and the said executive of Massachusetts, having made demand of the executive of New Jersey for his rendi-

tion as a fugitive from justice and it appearing that the said Charles K. Hogan is now in the State of New Jersey.

These are therefore to authorize and require you the said sheriffs, under sheriffs and constables to cause him forthwith to be delivered to James R. Claffin agreeably to the said demand of the executive of the State of Massachusetts and the receipt of the said James R. Claffin for the said Charles K. Hogan shall be your warrant for his delivery.

In testimony whereof I have hereunto set my hand and caused the great seal of the state to be affixed at Trenton this 21st day of February in the year of our Lord one thousand nine hundred and nineteen.

WALTER E. EDGE, Governor.
WILLIAM H. O'NEILL,
By CHRISTIAN N. DELL,
Sergeant of Police.

By the Governor:
THOS L. MARTIN,
Secretary of State."

40 United States District Court, District of New Jersey.

CHARLES K. HOGAN, Petitioner,

vs.

WILLIAM H. O'NEILL, as Chief of Police of the City of East Orange,
N. J., Respondent.

On Petition for Writ of Habeas Corpus.

Appearances:

Reuben D. Silliman, Esq., for the Petitioner;
William S. Kinney, Esq., for the Respondent.

*Proceedings Before Hon. Thomas G. Haight upon the Return of
Writ, at the Post Office Building, in Newark, N. J., on Friday and
Saturday, February 28 and March 1, 1919.*

(Filed May 19, 1919.)

41 CHARLES K. HOGAN, the petitioner, being duly sworn according to law, upon his oath, testifies as follows:

Direct examination.

By Mr. Silliman:

Q. Where were you born?
A. Quincy, Mass.

Q. How old are you?

A. Thirty years.

Q. Where are your parents residing at the present time?

A. Quincy, Mass.

Q. Where have they resided since you were born?

A. Quincy, Mass.

Q. What is your wife's native state?

A. Massachusetts.

Q. Where was your wife born?

A. Quincy, Mass.

Q. Are her parents still living there?

A. They live in Wollaston, a part of Quincy.

Q. And have lived there ever since her birth?

A. Yes.

Q. Do you know Luther R. Hanson?

A. Yes.

Q. Is he related to you in any way?

A. Distantly, yes.

Q. How distantly?

A. His mother is my grandmother's cousin.

Q. About fourth cousin?

A. I don't know.

Q. You have verified a petition here in which you deny that you formed any conspiracy with him in August, 1916?

A. I never formed any conspiracy with him.

Q. Did you have any conversation with him in respect to the Market Trust Company at that time?

A. No.

42 Q. Did you have any conversation with him with respect to the Market Trust Company, its property, moneys, credits or goods or chattels, in Massachusetts, at any time?

A. No.

Q. Did you have any conversation with him in Massachusetts with regard to using in any way or obtaining in any way any money, property, goods or chattels of the Market Trust Company?

A. No.

By the Court:

Q. In Massachusetts or elsewhere?

A. Or elsewhere.

Q. Did you have any communication with him by letter in regard to the obtaining of any of the moneys, or property or effects of the Market Trust Company?

A. No, Your Honor.

Q. Was he an employe of that Company?

A. Yes, sir.

Q. And embezzled some of its moneys?

A. So they said.

Mr. Kinney: \$170,000.

Q. Did you have any conversation with him about it, at all, at any time?

A. No, sir; no, Your Honor.

By Mr. Silliman:

Q. Now, you were in Massachusetts some time in the year 1916?

A. Yes.

Q. Do you remember when?

A. Summer of 1916.

Q. You are not able to fix the date.

A. No; I cannot.

By the Court:

Q. Were you there subsequent to that?

43 A. Do you mean at any time?

Q. At any time between that and the present time?

A. Yes; I think I was.

Q. When?

A. In the Fall of 1917.

By Mr. Silliman:

Q. Did you see Hanson at all at the time you were there in 1917?

A. I saw him once.

Q. Your wife was with you on that occasion?

A. Yes; I went to Massachusetts twice in the fall of 1917.

Q. She was with you on both of those occasions?

A. Both times.

Q. Were you out of your wife's company while you were with Mr. Hanson?

A. No.

Q. There was no conversation with him of any business character carried on between you?

A. No, sir.

Q. Nothing said about money or stocks or anything of that kind?

A. No, sir.

By the Court:

Q. That was the only time you were in Massachusetts in 1917?

A. All that I recollect.

Q. Did you have any conversation with Hanson when you say you were there in 1916?

A. Yes; I saw him and talked with him.

Q. Any conversation regarding the Market Trust Company or any of its assets or any of his speculations or anything of that kind?

A. No, sir.

Q. Where were you in 1916; in what part of Massachusetts?

44 A. Quincy, Mass.

Q. Did you go to Boston?

A. Went through Boston.

Q. Did you see Hanson in Boston?

A. No, sir.

Q. When you went there in 1917, what part of Massachusetts did you go to?

A. Quincy, Mass.

Q. Did you see Hanson there?

A. He might have driven me in his automobile over or driven me from there in his automobile.

Q. Did he live in Quincy?

A. Formerly he did.

Q. Where was this Trust Company located?

A. In a part of Boston; I don't know whether they were in the Brighton or Allston section of Boston; I don't know which.

By Mr. Silliman:

Q. What was the occasion of your visit to Massachusetts in 1917?

A. We had not been—Mrs. Hogan and I had not been—to Quincy for some time, I guess in fact not since we had been living here, and it was my mother's birthday, the twenty-third of September, and we went on as a surprise party to her, and she had never seen my little boy, and the four of us went on to see my mother.

Q. What was the occasion of the other visit?

A. Funeral of a friend of mine.

By the Court:

Q. That is 1917?

A. Fall of 1917.

By Mr. Silliman:

Q. What was the occasion of the visit in 1916?

A. Only to see my people.

45 Q. How long were you there in 1916?

A. I don't know.

Q. Well, to the best of your knowledge?

A. It might have been a day or two, but I cannot say.

Q. Not more than two days at the most?

A. I should say that was about all.

Q. How long were you there on the other two occasions?

A. In September we left East Orange Friday night and arrived back in East Orange Monday morning following.

Q. And the other occasion?

A. Left East Orange Saturday morning and was back in New York Tuesday morning.

Q. And on none of these occasions did you have any business conversation with Mr. Hanson?

A. The latter time I did not see Mr. Hanson; did not talk with him.

Q. On the other occasion you had no business conversation?
A. No.

Cross-examination.

By Mr. Kinney:

Q. During the summer months, 1916, you called at the home where Mr. Hanson lived, did you not?

A. Do you mean his home or where his mother lived?

Q. Where he was living? You know what I mean; you understand that—where he was living?

A. Where he was rooming—is that it?

Q. Yes?

A. Yes.

Q. That is the home of the gentleman in the rear of the room?

A. Mr. Darr, yes.

Q. You stayed over night with Hanson?

A. Saturday night.

46 Q. You and Hanson stayed all night there together?
A. That is right.

The Court: 1916?

Mr. Kinney: 1916, the date set forth in the indictment.

Q. That is true, is it not?

A. I don't know the date.

Q. The date set forth is August 18; is that substantially the time when you were there and stayed over night with Hanson?

A. I cannot say it is.

Q. What is your recollection?

A. I only recall that I was in Boston in the summer of 1916; I do not remember the date I was there.

Q. You do remember that you stayed over night with Hanson?

A. One night I stayed in Mr. Darr's house and had breakfast the next morning, and Mr. Darr cooked the breakfast.

Q. You know that Hanson was an employee in the Market Trust Company?

A. Do you claim an official is a clerk?

Q. We won't quibble.

A. I know he was employed in the Market Trust Company.

Q. When you were there and stayed over night with Hanson in 1916, the date set forth in this indictment, your wife was not with you, was she?

A. No, sir.

Mr. Silliman: I would now like to call Mrs. Hogan.

Mr. Kinney: I submit that the wife's testimony is incompetent.

The Court: I am going to take it.

MARGARET HOGAN, sworn as a witness on the part of the petitioner, testifies as follows:

47 Direct examination.

By Mr. Silliman:

Q. You are the wife of Mr. Hogan?

A. I am.

Q. You were born in Massachusetts?

A. Massachusetts.

Q. And your parents are still living there?

A. Still living there.

Q. You heard him testify that he was there in 1917?

A. I did.

Q. Did you accompany him?

A. I did.

Q. You were there on two occasions when he was there in 1917?

A. I was.

Q. What were those occasions?

A. September 23d we went to surprise his mother with both of the children, the baby which she had never seen. In October we went to a funeral after the death of a friend.

Q. On how many occasions did Mr. Hogan see Mr. Hanson that time?

A. One.

Q. What was that?

A. He drove us in the automobile with our two children. That is absolutely all.

Q. Was there any conversation between them?

A. Absolutely not.

Q. Was there any conversation between them with reference to any business matters whatsoever?

A. No.

Q. Or anything about money?

A. No.

Q. Or goods or chattels?

A. Nothing absolutely.

48 Q. Or anything about the Market Trust Company.

A. No.

Q. Or speculating in stocks?

A. No.

Q. Or anything of the kind?

A. No.

Q. So far as you know, those are the only two occasions he was there, except the time he was in 1916?

A. The only occasions.

By the Court:

Q. You were not there with him in 1916?

A. I was not.

Mr. Kinney: If your Honor please, I would like to ask Mr. Hogan a few more questions.

The Court: Call him.

CHARLES K. HOGAN, the petitioner, recalled and further examined as follows:

By Mr. Kinney:

Q. Is it not true that you have endorsed checks on the Market Trust Company, five checks amounting to \$22,451?

A. I have endorsed some checks; I don't know the amount.

Q. Would you say that the amount, \$22,451 of checks on the Market Trust Company, endorsed by you, was not correct?

A. No.

Q. You would not say it was not correct?

A. No.

Q. Have you any explanation to give to the Court as to why you endorsed checks amounting to \$22,451 on the Market Trust Company?

A. What explanation do you wish.

49 Q. I ask you if you have any explanation to give the Court as to what those transactions were, or any explanation that you desire to give the Court in regard to them?

A. These checks were sent to me in normal course of business.

Q. These checks were sent to you by Hanson?

A. Yes.

Q. What course of business did you have with Hanson that involved sending to you checks amounting to \$22,000?

A. Brokerage business.

By the Court:

Q. Were you in business in New York?

A. Yes.

Q. What was your business?

A. Broker and bond salesman.

Q. Where did you receive these checks that were sent to you?

A. My office.

Q. In New York?

A. Yes, sir.

Q. You used them for what purpose, or rather used the proceeds of them for what purpose?

A. Carrying on my brokerage account.

Q. Was Hanson purchasing stocks or bonds through you?

A. I was trading in stocks.

Q. Were you a broker?

A. A broker, trading, yes.

Q. Did he purchase through you or from you?

A. His purchases were made through me and sales made, yes.

Q. These checks that you received were to cover his account?

A. Yes, sir.

Q. That is, used in the transaction?

A. Yes.

Q. Did you carry on a regular brokerage business account with customers, as ordinarily done?

50 A. No, sir.

Q. Exactly what were your dealings with Hanson in respect to the checks?

A. Well, he sent me—my account—I carried the account in my name.

Q. With another firm?

A. Another firm; yes, sir.

Q. In New York?

A. In New York.

Q. And he sent you the money?

A. Yes.

Q. Which you yourself deposited with that firm?

A. Yes, sir.

Q. For the purpose of carrying on these transactions in stocks or bonds, or whatever they were?

A. Yes, sir.

By Mr. Kinney:

Q. You knew that Hanson was only a minor employee in the bank?

A. I did not consider him a minor employee in the bank.

Q. You knew that he was only a clerk there, did you not?

A. I did not consider him a clerk.

Q. You knew that he was a man without property or funds of his own, did you not?

A. Yes, sir.

Q. Didn't you know that Hanson was a poor boy?

A. I did not consider him poor.

Q. Didn't you know that he did not have any such amount as this, of his own funds, 22,500?

A. Why, it is very possible for him to have some money.

Q. Did you know of any source from which he was getting that money?

A. No.

Q. You knew it had not been left him and he had not earned it, from salary, didn't you?

51 A. No; I did not know.

By Mr. Sillman:

Q. Did you ask him where he got it?

A. No.

Q. Did you have any reason to suspect that he was taking it from the bank or obtaining it in any way improperly?

A. No.

By the Court:

Q. How did you come to get these checks? There was, of course, some prior conversation or arrangement between you and Hanson whereby they were sent?

A. He would telephone me he was sending me this sum of money.

Q. How did that come about?

A. Well, he wished to trade in securities and make money and asked me if it could be done, and I said certainly he could make money in the market.

Q. Where did that conversation take place?

A. I do not recollect whether it was at my house or not.

Q. Did he come to visit you in East Orange?

A. Yes.

Q. From time to time?

A. Yes.

Q. Did you have any conversation with him about this dealing in stock or bonds at the time you were in Quincy in 1916, or in Boston?

A. We might have discussed the market to some extent; I don't remember.

Q. About his dealing with you or through you?

A. Oh, I don't recollect that.

Q. When did you first start to deal with him?

A. Oh, I don't remember.

Q. Was it after 1916 or prior to 1916?

A. Why, I think he bought his first shares of stock through the firm I was with in 1907 panic.

Q. And went on from that time on?

A. I have known him from that time on, of course.

Q. Did his business dealings go on from that time on?

A. Well, any ordinary kind of investment; he might substitute one investment for another.

By Mr. Silliman:

Q. Did he have any account with you in 1916?

A. I carried no account in 1916.

Q. Were you doing any speculating for him in 1916 in any way?

A. Part of 1916 I might have.

Q. Which part?

A. I could not say; I have no recollection.

Q. Did he have any account with you in 1917?

A. Yes.

Q. Just describe the nature of the account?

A. Why, in December, 1917, he thought the market had reached its low level, and we had gone into the war and the United States had gone into the war on the side of the Allies and made sure victory for the Allies and he thought that the market would discount that.

Q. Did you ever speculate with him or have dealings for him prior to December, 1917?

A. As I said; as I told the judge.

Q. In the year 1917?

A. I cannot definitely say yes.

Q. You did not know that any money he was using was other than his own?

A. No.

Mr. Kinney: I have another witness that he was in Boston on the

53 eighteenth day of August, 1916, and stayed overnight with Hanson and was at his house two or three days at that time, which is the time set forth in the indictment; but all this has been admitted.

The Court: I think you better establish that.

CHESTER F. DARR, sworn as a witness on the part of the Commonwealth of Massachusetts, testifies as follows:

Direct examination. .

By Mr. Kinney:

Q. You reside where?

A. At present time at 1232 Commonwealth Avenue, Allston.

Q. Allston is a suburb and part of the City of Boston?

A. Yes.

Q. Where did you reside in August, 1916?

A. 588 Cambridge Street, Allston.

Q. Which is in the City of Boston?

A. Yes.

Q. Did Luther Hanson live at your house?

A. He roomed there; yes.

Q. He was employed at the Market Trust Company?

A. Yes.

Q. Which is a trust company located in that section of Boston?

A. Yes.

Q. In what capacity was he employed there, if you know?

A. Well, at that time I could not tell you. I think teller. I am not positive about that.

Q. Do you know whether or not this defendant, Charles K. Hogan, came to your place in question, in the month of August—

A. I could not tell you whether it was August.

Q. When did he come there?

A. It was in the summer time.

Q. Of what year?

54 A. 1916.

Q. Whom did he see there?

A. He stayed all night with Mr. Hanson.

Q. How many different days did he come there?

A. I don't remember but this one night.

Q. This one night?

A. That is all I remember; yes, sir.

Q. Was Mr. Hanson living there with anyone else or was he living alone?

A. Alone.

Q. At that time was Mr. Hanson married?

A. No, sir.

Q. Did anyone accompany this defendant when he came there, other than Mr. Hanson?

A. Not that I know of; no.

Cross-examination.

By Mr. Silliman:

- Q. How long did Mr. Hanson live with you?
 A. I think it was just about four years.
 Q. You remember only this one occasion when Mr. Hogan was with him?
 A. The only time he was at that address.
 Q. You are not able to fix the time positively except that it was in 1916?
 A. It was in the summer time; it was in warm weather.
 Q. You know nothing whatever about any conversation that took place between Hanson and Hogan?
 A. No, sir.
 Q. In fact, you know no facts that have any bearing on this, except what you have already testified to?
 A. Not a thing.

Adjourned to March 1, 1919, at ten o'clock in the forenoon.

55

March 1st, 1919.

The petitioner was produced in Court, pursuant to the writ of habeas corpus, this day issued, together with the return of William H. O'Neill, the person in whose custody he is, and to whom the writ is directed.

It is stipulated and agreed

1. That a demand for the apprehension and extradition to Massachusetts of the petitioner was made by the Governor of Massachusetts upon the Governor of New Jersey; that said requisition was accompanied by a copy of an indictment found by the Grand Jury of the County of Suffolk, in the Commonwealth of Massachusetts, a copy of which said indictment is set out in the petition; that said indictment was certified as authentic by the Governor of Massachusetts; that accompanying said requisition and said copy of indictment, certified as authentic as aforesaid, there was an affidavit of one James R. Claffin, a copy of which is set forth in the petition herein, and an affidavit of one Henry Bothwell, a copy of which is as follows:

COMMONWEALTH OF MASSACHUSETTS,

Suffolk, ss:

Superior Court for the Transaction of Criminal Business within and for the County of Suffolk.

I, Henry E. Bothfeld of Sherborn in the County of Middlesex and said Commonwealth, on oath depose and say that I am one of the principal complaining witnesses in the case of said Commonwealth against Charles K. Hogan who stands indicted before said Court for the crime of conspiracy as is more fully set forth in the papers hereto

annexed; that this application for the extradition of said Hogan is made in good faith for the sole purpose of punishing said
56 Hogan for the said crime; that I do not desire nor expect to use, neither shall I directly nor indirectly use the prosecution for the purpose of collecting a debt nor for private purpose; that said Hogan was in said Boston for some time previous to and at the time of the commission of said crime, and that said Hogan left said Commonwealth of Massachusetts on or about the eighteenth day of August A. D. 1916.

HENRY E. BOTHFELD.

Then personally appeared the above named Henry E. Bothfeld before said Superior Court and made oath that the foregoing affidavit by him subscribed is true, this seventeenth day of February A. D. 1919.

JOHN P. MANNING,
Clerk of said Superior Court.

2. That thereupon his Excellency Walter E. Edge, Governor of the State of New Jersey, on the 21st day of February, 1919, issued under his hand and the seal of the State of New Jersey, his warrant for the apprehension and extradition of the petitioner, a copy of which said warrant is set forth in the return of William H. O'Neill herein.

3. That the testimony taken in open court on the return of the writ of habeas corpus issued herein upon the application of the present petitioner on the twenty fourth day of February, 1919, shall be considered, for all purposes, as having been given and testified to upon the return of the writ issued in the present proceedings and to the same force and effect as if actually given and testified to in open court in such proceedings.

Mr. Silliman: I want to call Mr. Clafin.

57 Mr. Kenney: Does your honor understand that the testimony is open now.

The Court: Yes, I understand it is still open.

JAMES R. CLAFIN, called and sworn on behalf of the petitioner, testified as follows:

Direct examination.

By Mr. Silliman:

Q. You are the James R. Clafin who swore to the affidavit herein dated the 18th day of February, 1919?

A. I am.

Q. In that affidavit you deposed that Charles K. Hogan resided at that time in the City of Boston, in the Commonwealth of Massachusetts?

A. I did.

Q. You had no personal knowledge as to that?

A. No.

Q. None whatever?

A. No.

Testimony closed.

The COURT (orally):

Since the conclusion of the hearing yesterday on the first writ, I have examined the questions presented with sufficient care to enable me to dispose of the case without taking it under further advisement. The petitioner is in custody by virtue of a warrant issued by the Governor of New Jersey on demand of the Governor of Massachusetts for his extradition to the latter state, pursuant to Section 5278 of the Revised Statutes. Prior to the demand for his extradition he had been indicted, together with one Luther R. Hanson, by the Grand Jury of Suffolk County, Massachusetts, for a conspiracy to steal from Market Trust Company, a banking institution of Massachusetts. A copy of the indictment, certified as authentic by the Governor of Massachusetts, was produced with the demand for extradition. No

58 question is raised that the defendant is not substantially charged therein with a crime against the laws of Massachusetts. The only question is whether or not he is a fugitive from justice, within the meaning of the beforementioned section of the Revised Statutes. The indictment alleges that the crime was committed on August 18, 1916. While it has been conclusively established that for a long time prior to the last mentioned date and up to and including the present time, the petitioner has been a resident of the State of New Jersey, it also appears, from his own admission, that at about the time the indictment alleges that the crime was committed, he was in the State of Massachusetts, in company with the co-defendant, Hanson.

It should be stated at the outset that this is not a case where it is sought to extradite one who was merely constructively present in the demanding state when the crime was committed, as in *Hyatt vs. Corkran*, 188 U. S. 671. The fact that the petitioner was residing, at the time of the commission of the crime, in the State of New Jersey, and has continued to do so, is of no materiality, as it is sufficient to constitute him a fugitive from justice, within the meaning of the Statute, if he was in the State of Massachusetts at the time the crime was committed, and when he is sought to be subjected to its criminal process to answer for his offense, he has left its jurisdiction and is found within the territory of another, and that without regard to when he left or the purpose or motive which he had in leaving.

Roberts vs. Reilly, 116 U. S. 80; *Munsey vs. Clough*, 196 U. S. 364; *Appleyard vs. Massachusetts*, 203 U. S. 222; *McNichols vs. Pease*, 207 U. S. 100; *Drew vs. Thaw*, 235 U. S. 432, 439. Furthermore, it was established in *Strasheim vs. Daily*, 221 U. S. 280, that one need not do within the state every act necessary to complete the crime, for, as was said by Mr. Justice Holmes (p. 285),

"If he does there an overt act which is and is intended to be a material step toward accomplishing the crime, and then absents himself from the state and does the rest elsewhere, he becomes a fugitive from justice when the crime is complete, if not before. * * * For all that is necessary to convert a criminal under the laws of a State into a fugitive from justice, is that he should have left the State after having incurred guilt there."

The defendant not only has not attempted to prove that he was not in Massachusetts at the time the indictment alleges that the crime was committed, thus failing to overcome the *prima facie* effect, on that point, of the warrant of the Governor of New Jersey, (*Munsey vs. Glough*; *McNichols vs. Pease*, at 109), but he expressly admitted that he was there about that time. The prosecution on the trial would not be required to prove that the crime was committed at the very time alleged in the indictment. It is suggested, however, that the decision in *Strassheim vs. Daily* requires that one must have committed some overt act within the demanding jurisdiction before he becomes a fugitive from justice. Even if it is permissible to find, with the requisite degree of certainty, from the evidence in this case, that the petitioner did not commit an overt act, as that term is usually understood in the law of conspiracy, I am nevertheless unable to comprehend the force of that contention in a case such as this where the crime with which the petitioner is charged is conspiracy, which, under the laws of Massachusetts, is complete upon the making of the unlawful agreement, quite irrespective of whether any overt act was thereafter performed for the purpose of carrying out the conspiracy. But even if the crime charged were not complete without an overt act, still, under the *Strassheim* case, I think the petitioner would, nevertheless, be a fugitive from justice. I

60 understand that decision to mean that if, within the demanding state, the person charged with crime does anything which is, and is intended to be a material step towards the accomplishment of the crime, and then leaves that state and does the rest elsewhere (if it was necessary for him to do anything more to incur criminal liability), that that is sufficient. If two persons within the borders of a state conspire,—agree—to commit a crime, and then one of them leaves the state and the other performs an overt act to accomplish the purpose of the conspiracy within the state, it is difficult to perceive why, under the reasoning of *Strassheim vs. Daily*, the one who left the state, providing he could not be found therein to answer for the crime when he was sought, is not a fugitive from justice. Yet in such a case he would not have committed an overt act, as that term is ordinarily understood, although he would have taken a very material step towards the accomplishment of the crime, a step, indeed, without which the crime of conspiracy could not have been committed.

It follows, therefore, as the petitioner has failed to prove that he was not in the demanding state at the time the crime is alleged to have been committed, and as it appears that he is substantially charged with a crime therein, and is now in the State of New Jersey,

that the writ of habeas corpus must be discharged and the petitioner remanded to the custody of the respondent.

61 United States District Court, District of New Jersey.

CHARLES K. HOGAN, Petitioner,

VS.

WILLIAM H. O'NEILL, as Chief of Police of the City of East Orange,
N. J., Respondent.

On Petition for Habeas Corpus.

Order Discharging Writ.

(Filed March 1, 1919.)

This matter coming on to be heard, upon the return of a writ of habeas corpus issued in the above entitled matter, on the first day of March, 1919, in the presence of Reuben D. Silliman, appearing for the petitioner and William S. Kinney, Assistant District Attorney for the County of Suffolk, in the Commonwealth of Massachusetts, appearing for the respondent; and the Court having considered the petition, the return to the said writ made by the said respondent, the stipulation entered into by the parties, and the proofs taken in open court; and having heard argument of counsel.

It is, on this first day of March, 1919, ordered that the writ of habeas corpus issued herein on the first day of March, 1919, be and the same is hereby discharged and dismissed and that the petitioner be remanded to the custody of the respondent.

THOMAS G. HAIGHT, Judge.

62 In the District Court of the United States for the District of
New Jersey.

In the Matter of the Second Application of CHARLES K. HOGAN for
a Writ of Habeas Corpus.

Petition for and Order on Appeal.

(Filed March 1, 1919.)

The above named petitioner, Charles K. Hogan, conceiving himself aggrieved by the decision, order and judgment made and entered on the 1st day of March, 1919, in the above entitled cause, does hereby appeal from said decision, order and judgment to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith, and prays that this appeal may be allowed, and that pending the determination of the appeal he may be allowed to go at ~~large~~ upon bail, and that a transcript of the record,

proceedings and papers upon which such decision, order and judgment were made, duly authenticated may be sent to the Supreme Court of the United States.

Dated this 1st day of March, 1919.

CHARLES K. HOGAN, *Petitioner*.

The foregoing appeal is allowed and bail is fixed in the sum of \$10,000 to be approved by any judge of this court as to form and sufficiency of surety.

THOMAS G. HAIGHT, *Judge*.

63 In the District Court of the United States for the District of New Jersey.

In the Matter of the Second Application of CHARLES K. HOGAN for a Writ of Habeas Corpus.

Assignment of Errors.

(Filed March 1, 1919.)

Now comes the petitioner, Charles K. Hogan, and makes and presents the following assignment of errors of and concerning the proceedings, decision, order and judgment had and entered in the above entitled matter in said United States District Court for the District of New Jersey.

First. The court erred in finding that the petitioner was not entitled to his release from the custody of the respondent, William H. O'Neill, Chief of Police of the City of East Orange.

Second. The court erred in not finding that petitioner was not a fugitive from the justice of the State of Massachusetts.

Third. The court erred in remanding petitioner to the custody of the said respondent.

Fourth. The court erred in finding that the Governor of New Jersey was justified in issuing his warrant for the delivery of respondent to the agent of the State of Massachusetts for extradition.

Fifth. The court erred in not finding that the prima facie case created by the issuance of the warrant of the Governor of New Jersey was not overcome by the facts set forth and established by the petition and proceedings herein.

64 Sixth. The court erred in finding that the presence of the petitioner with the alleged co-conspirator in the demanding State of Massachusetts at about the time laid in the conspiracy indictment justified his removal to Massachusetts under the authority of Article 4, Section 2, of the Constitution of the United States, and Section 5278 of the Revised Statutes of the United States.

Seventh. The court erred in not finding that, before petitioner could be extradited under the authority of the United States Constitution and laws, it was necessary that an overt act done by him

in the State of Massachusetts, toward or in pursuit of the alleged conspiracy, be affirmatively proved.

Dated: March 1, 1919.

Respectfully submitted,

CHARLES K. HOGAN, *Petitioner.*

65 THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to William H. O'Neill, Chief of Police of the City of East Orange, New Jersey, Greeting:

You are cited and admonished to be and appear at a Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal, duly allowed by the District Court for the District of New Jersey, and filed in the clerk's office of said court on the first day of March A. D., 1919; in a cause wherein Charles K. Hogan is appellant, and you are appellee, to show cause, if any, why the order remanding said appellant to your custody, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States this 7th day of May, 1919.

THOMAS G. HAIGHT, *Judge.*

Service by copy of the within citation is hereby admitted this 8th day of May, 1919.

WILLIAM H. O'NEILL,

Chief of Police, East Orange, N. J., Appellee.

66 UNITED STATES OF AMERICA,
District of New Jersey, ss:

I, George T. Cranmer, clerk of the District Court of the United States for the District of New Jersey, do hereby certify and return to the appeal of Charles K. Hogan in the proceeding wherein he is petitioner and William H. O'Neill, chief of police of the City of East Orange, New Jersey is respondent, that the above and forgoing is a true copy of all papers filed, and proceedings had and entered in said cause and called for by the præcipe for record on appeal as the same appear on file and of record in my office; that I have compared the same with the originals, and they are true and correct transcripts therefrom and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Trenton in said District, this 23d day of

May in the year of our Lord one thousand nine hundred and nineteen.

[Seal District Court of the United States, District of New Jersey.]

• GEORGE T. CRANMER,
Clerk of the District Court of the United States
for the District of New Jersey,
 By ROBERT S. CHEVRIER, *Deputy.*

67 THE UNITED STATES OF AMERICA, ss:

The President of the United States to William H. O'Neill, Chief of Police of the City of East Orange, New Jersey, Greeting:

You are cited and admonished to be and appear at a Supreme Court of the United States at the City of Washington, within thirty days from the date of this writ, pursuant to an appeal, duly allowed by the District Court for the District of New Jersey, and filed in the clerk's office of said court on the first day of March A. D. 1919; in a cause wherein Charles K. Hogan is appellant, and you are appellee, to show cause, if any, why the order remanding said appellant to your custody, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States this 7th day of May, 1919.

THOMAS G. HAIGHT, *Judge.*

Service by copy of the within citation is hereby admitted this 8th day of May, 1919.

WILLIAM H. O'NEILL,
Chief of Police, East Orange, N. J., Appellee.

68 [Endorsed:] United States District Court, District of New Jersey. In the Matter of the Second Application of Charles K. Hogan, for a writ of habeas corpus. Citation. Filed —.

Endorsed on cover: File No. 27,154. New Jersey D. C. U. S. Term No. 399. Charles K. Hogan, appellant, vs. William H. O'Neill, Chief of Police of the City of East Orange, New Jersey. Filed June 3d, 1919. File No. 27,154.

FILE COPY

FILED

MAR 26 1920

**JAMES J. MAHER,
CLERK.**

Supreme Court of the United States

OCTOBER TERM, 1919.

No. 300:

130

CHARLES K. HOGAN,

Appellant,

vs.

**WILLIAM H. O'NEILL, Chief of Police of the
City of East Orange, New Jersey.**

BRIEF OF APPELLANT.

REUBEN D. SILLIMAN,

Counsel for Appellant.

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Supreme Court of the United States

OCTOBER TERM, 1919.

No. 399.

CHARLES K. HOGAN,
Appellant,
vs.

WILLIAM H. O'NEILL, Chief of
Police of the City of East
Orange, New Jersey.

BRIEF OF APPELLANT.

STATEMENT OF FACTS.

How the Case Comes to this Court.

This is an appeal from an order of the United States District Court for the District of New Jersey discharging a writ or habeas corpus and remanding the appellant to the custody of the appellee, the chief of Police of East Orange (Record 32), for rendition to the agent of the state of Massachusetts for trial there upon an indictment charging him with conspiring to steal the property, moneys and chattels of the Market Trust Company, a banking corporation (Record 17).

The District Court had jurisdiction to hear the Matter and this Court has Jurisdiction to hear the Appeal.

Biddinger vs. Commissioner of Police of the City of New York, 245 U. S., 128.

Strassheim vs. Dally, 221 U. S., 280.

Roberts vs. Reilly 116 U. S., 80, 94.

Statement of the Case.

Charles K. Hogan, the appellant, has resided openly and continuously at his home, number 278 William Street, in the City of East Orange, New Jersey, since October, 1915. He is a highly respected citizen, devoted to his family, consisting of his wife and two children, esteemed by his neighbors and friends, thirty of whom have furnished affidavits as to his habits and other facts inconsistent with the charge made and facts necessary to procure his rendition (Record, 5-16).

Affiliated with a stock brokerage firm in New York City, Hogan executed orders for the purchase and sale of stocks and bonds for one, Luther R. Hanson. Beginning in the panic of 1907, Hanson, who was a junior officer of the Market Trust Company, occasionally purchased stocks and bonds through Hogan. In December, 1917, Hanson, thinking the stock market prices had reached their low level and reasoning that since the United States had gone into the war on the side of the Allies and victory was assured, the prices of securities would advance, sent money to Hogan for speculation. Between August 18, 1918, and Jan-

uary 16, 1919, Hanson sent checks to Hogan in New York, aggregating some \$22,000 which were deposited by Hogan with the brokers for the purpose for which they were sent (Record, 3, 22-24, 26). It is charged that Hanson stole the money from the Market Trust Company and it is sought to hold Hogan accountable with him. During the time the checks were received and for nearly a year prior thereto Hogan had not been in Massachusetts and he charges in his petition for the writ of *habeas corpus* that to obtain his rendition a conspiracy indictment was procured which reaches back to August 18, 1916, exactly two years prior to the date when Hanson's first alleged theft occurred, and Hogan charges that this was done in order to include a time when he had been in Massachusetts (Record, 3 and 4).

The conspiracy indictment is the only one on which his rendition is sought, is short and is as follows:

*"The Commonwealth of Massachusetts,
Suffolk, ss.:*

At the Superior Court Begun and Holden at the City of Boston, within and for the County of Suffolk, for the Transaction of Criminal Business, on the First Monday of February, in the year of Our Lord One Thousand Nine Hundred and Nineteen.

The Jurors for the Commonwealth of Massachusetts, on their oath present that Charles K. Hogan and Luther R. Hanson on the eighteenth day of August in the year of our Lord one thousand nine hundred and sixteen

conspired together to steal the property, moneys, goods and chattels of the Market Trust Company, a banking corporation legally established and existing.

A true Bill.

SAMUEL S. REINSTEIN,
Foreman of the Grand Jury.

J. C. PELLETIER,
District Attorney."

It will be observed that it is not charged that the alleged conspiracy was entered into in Massachusetts nor is it charged that any act was done in pursuit of it in Massachusetts. No fact is stated laying the alleged crime within the State of Massachusetts. It might have been entered into in any other State and wholly performed outside of Massachusetts.

Upon the conspiracy indictment and two meager affidavits, accompanied by the usual forms of request for rendition, and nothing more, an application was made by the Governor of Massachusetts to the Governor of New Jersey for the rendition of Hogan as a fugitive from justice. One of the two affidavits was made by James H. Claffin, a stranger to the appellant, who alleged in his affidavit that Hogan was at and previous to the eighteenth day of August, 1916, a resident of the City of Boston and that he fled from the Commonwealth of Massachusetts on or about the eighteenth day of August, 1916 (Record 2). Claffin was at the hearing and was called to the stand. He testified he had no personal knowledge as to the residence of Hogan when he made that affidavit. "Q. None

whatever? A. No" (Record 29-30). The other of the two affidavits was sworn to by one, Henry E. Bothfeld, who described himself as one of the complaining witnesses. Bothfeld did not come to the hearing and it is fair to say that his affidavit was as worthless as that of Claffin. No other fact connected with the charge of conspiracy, residence or presence in Massachusetts was presented in the papers for Hogan's rendition.

The Governor of New Jersey did not grant appellant a hearing, but issued his warrant and compelled the appellant to apply for a writ of *habeas corpus* which was granted (Record 32).

Hogan swore in his second petition for a writ of *habeas corpus*, which was verified after he was on the stand, that he never conspired with Hanson in Massachusetts, or elsewhere, that the papers charging him with the alleged crime are insufficient to support the warrant for his removal to Massachusetts and that the charge is made for the purpose of procuring his rendition with intent to try him on larceny counts in case he shall be taken to Massachusetts.

The sole support of any charge against him would appear to be the receipt by Hogan in New York of money to cover Hanson's stock speculation and the whole foundation for the charge would seem to be that he ought to have inquired from Hanson where he got the money before using it (Record 24).

The appellant, Hogan, was called as a witness at the hearing in the court below and testified affirmatively that he never conspired with Hanson, that he had no conversation with him respecting the Market Trust Company, its property, moneys,

credits, goods or chattels at any time in Massachusetts or elsewhere and that he had no communication with Hanson by letter regarding the obtaining of any moneys or property or effects of the Market Trust Company (Record 19). This testimony is supported by his wife (Record 23) and is not contradicted.

Disregarding that the indictment did not charge that the alleged conspiracy was entered into in Massachusetts and that there was no proof of an overt act in Massachusetts, the lower court in a brief oral opinion held that the admission of Hogan that he was in Massachusetts for other purposes at about the time laid in the indictment was sufficient to justify his rendition and ordered him remanded to the custody of the appellee, allowing this appeal.

The Controversy.

As set forth in the seven assignments of error (Record 33) the controversy is over the validity of the warrant of rendition upon an indictment, which does not charge the commission of a crime in Massachusetts, and of the order of the court below upon the proceedings had, which did not show any overt act in Massachusetts.

POINT I.

The Court below erred in deciding that the appellant should be delivered to the agent of Massachusetts for trial there, since the indictment does not charge him with having committed a crime in Massachusetts; nor is there any proof of an overt act done by him in Massachusetts in pursuit of the conspiracy charged in the indictment.

In other words, there was no proof that Hogan was a fugitive from justice within the natural meaning of the words and the established interpretation of the rendition clause of the Constitution under the decisions of this court. There is no allegation in the indictment that the alleged crime was committed in Massachusetts, while the evidence taken at the hearing showed that no conspiracy was entered into there or elsewhere. The failure to charge that the alleged conspiracy was entered into in Massachusetts is a fatal defect. The laying of the crime in Massachusetts is required by the uniform decisions of this court. The reason for the lapse will be readily understood, and it is not rare to find such lapses when an act is done for an ulterior purpose. There was, in fact, no conspiracy entered into. The conspiracy indictment was found, we assert confidently, to procure the rendition of Hogan to Massachusetts for trial on larceny counts, as he has charged in his petition (Record 4), and, perhaps, to give scope for the admission of evidence. But, as often happens in such cases, an indispensable allegation was omitted.

Hogan is not charged with having committed a crime within the State which seeks his rendition. That appears on the face of the papers, is a fatal defect and is "always open to judicial inquiry," in these rendition cases, "on an application for discharge under a writ of *habeas corpus*." *Roberts vs. Reilly*, 116 U. S., 80, 95; *Hyatt vs. New York, ex rel Corkran*, 188 U. S., 691, 709-710.

In an early case in the Circuit Court for Illinois, *ex parte Smith*, 3 McLean 121, Federal Cases No. 12,968, decided in 1843, the extradition of Joseph Smith, the founder of the Mormon Church, was sought by the State of Missouri on a charge of having been an accessory to an attempted murder alleged to have been committed by another in Missouri. The court said:

"This case presents the important question, arising under the Constitution and Laws of the United States, whether a citizen of the State of Illinois can be transported from his own state to the State of Missouri, to be there tried for a crime, which, if he ever committed, was committed in the State of Illinois."

And, after referring to the constitutional provision and the affidavit upon which it was sought to procure his extradition, it was decided:

"To authorize the arrest in this case, the affidavit should have stated distinctly; 1st. That Smith had committed a crime. 2d. *That he committed it in Missouri.*" The affidavit not having so charged, Smith was released upon a writ of *habeas corpus*.

All the decisions of this court, though liberal to a degree in other respects, declare it is essential that the indictment charge the accused with the commission of a crime within the state demanding him.

In *Commonwealth of Kentucky vs. Dennison*, 24 Howard, 66, an early case in this court, although emphasizing the duty of the states to render up persons charged with the commission of crimes in other states, it was recognized that it was essential that the person whose extradition is sought should be charged with the commission of a crime within the state demanding him. It is said:

“The clause in question like the clause in the confederation, authorizes the demand to be made by the executive authority of the state *where the crime was committed*” (24 Howard, 102).

And again,

“The conclusion is irresistible, that this compact ingrafted in the Constitution” (the rendition clause) “included, and was intended to include every offense made punishable by the law of the state *in which it was committed*” (24 Howard, 103. Our Italics).

In *Robb vs. Connolly*, it was conceded that where it appears on the face of the papers that the accused is not charged with the commission of a crime *in the demanding state* it is open to him to

challenge the papers upon a writ of *habeas corpus* issued either by the State or Federal courts (111 U. S., 624, 638).

In *Ex parte Reggel*, it is said that the indictment must be one charging the accused with a crime "*committed within*" the demanding state's "limits"; and again, that where the demand upon the governor of the state having custody of the accused is accompanied by an authentic indictment, charging him "with a specific crime *committed within her limits*", the accused should be delivered to the demanding state as a fugitive from justice (114 U. S., 642, 652-653).

In *Roberts vs. Reilly*, it is said:

"The Act of Congress (section 5278, Revised Statutes) makes it the duty of the executive authority of the State to which such person" (one charged with crime) "has fled, to cause the arrest of the alleged fugitive from justice, whenever the executive authority of any State demands such person as a fugitive from justice, and produces a copy of an indictment found or affidavit made before a magistrate of any State, charging the person demanded with *having committed a crime therein*, certified as authentic by the Governor or Chief Magistrate of the State from whence the person so charged has fled" (116 U. S., 80, 95. Our italics).

In *Hyatt vs. New York ex rel. Corkran*, Corkran was charged with having committed the crimes of larceny and false pretenses in Tennessee. It was conceded that he had not been in Tennessee at the time that it was charged the crimes were commit-

ted there but he had been in Tennessee on other business eight days later. This Court said :

"It is, however, contended that a person may be guilty of a larceny or false pretense within a state without being personally present in the state at the time. Therefore, the indictments found were sufficient justification for the requisition and for the action of the governor of New York thereon. This raises the question whether the relator could have been a fugitive from justice when it is conceded he was not in the State of Tennessee at the time of the commission of those acts for which he had been indicted, assuming that he committed them outside of the state.

"The exercise of jurisdiction by a state to make an act committed outside its borders a crime against the state is one thing, but to assert that the party committing such act comes under the Federal Statute, and is to be delivered up as a fugitive from the justice of that state, is quite a different proposition."

The Court then refers to the rendition statute and emphasizes by italics, three times repeated, that the fact of flight from the demanding state's jurisdiction is an important consideration.

It was held that a mere constructive presence in the demanding state at the time of the alleged commission of the offense is not sufficient to render the person a fugitive from justice; that he must have been personally present within the state at the time of the alleged commission of the act, and that his presence for one day on business connected with a

lumber company in which he was a stockholder, eight days after the alleged commission of the crime, did not, when he left the state, render him a fugitive from justice within the meaning of the statute. The Court also calls attention to the fact that the complaint was not made nor the indictment found, until months after he had been there.

Both the statute and the clause of the Constitution contemplate crime committed within the demanding state and flight into another state after the crime has been committed.

The purpose of the clause was to prevent the several states from becoming a haven for those who had committed crimes in what was then in a very real sense a foreign jurisdiction, and, while the character of the flight has been held unimportant, the decisions of this Court have continued to adhere to the vital intent of the clause that the accused should be charged with having committed a crime within the state demanding him and some direct connection with that crime must also be shown before a person can be taken to another state for trial there.

In *Munsey vs. Cloagh*, 196 U. S., 364, Martha S. Munsey, the accused, was charged with having published, as genuine, a forged will, at Cambridge, Middlesex County, Massachusetts. She fled to New Hampshire where her extradition was sought upon the usual papers, including copies of the indictment. At the hearing she refused to introduce any testimony.

After disposing of certain objections to the form of the indictment, this Court said upon the matter with which we are particularly concerned:

"Whether she was a resident or not is not important, as to the third count, if she were present in the state and committed the crime therein" 196 U. S., 374.

In *Pettibone vs. Nichols*, 203 U. S., 192, Pettibone charged that he had been kidnapped in Colorado and taken to Idaho after the governor of Colorado had issued a warrant for his extradition. On the point we are making, it is said that as papers submitted to the governor of Colorado showed that the accused was regularly charged by indictment with the crime of murder "committed in Idaho", and was a fugitive from its justice, the governor of Colorado was entitled to accept the papers as *prima facie* sufficient (203 U. S., 204).

In *Appleyard vs. Massachusetts*, 203 U. S., 222, Appleyard was indicted in the Supreme Court of New York for Erie County for the crime of grand larceny alleged to have been committed in that county. He was found in Massachusetts and his extradition was sought.

After referring to three hearings which the accused had had upon the merits of his claim that he was not a fugitive from justice and the fact that he was charged in the indictment with having committed the crime at Buffalo, in Erie County, in the state of New York, this court said:

"A person charged by indictment or by affidavit before a magistrate with the commission *within a state* of a crime covered by its laws, and who, after the date of the commission of such crime, leaves the state—no matter for what purpose or with what motive, nor with what belief—becomes from the time of such leaving, and within the meaning of the Constitution and the laws of the United

States, a fugitive from justice, and if found in another state, must be delivered up by the governor of such state to the state whose laws are alleged to have been violated, on the production of such indictment, or affidavit, certified as authentic by the governor of the state from which the accused departed. Such is the command of the supreme law of the land which may not be disregarded by any state" (203 U. S., 222, 227). (Our italics.)

In *Illinois ex rel. Mc Nichols vs. Pease*, 207 U. S., 100, the accused was charged with having committed the crime of larceny in the County of Kenosha, State of Wisconsin. He was arrested in Illinois and his removal to Wisconsin was sought upon papers, including a verified complaint or affidavit charging that he stole money at the City of Kenosha in said county. The governor, having issued his warrant, a writ of habeas corpus was obtained from the Supreme Court of Illinois. The accused contended he was not in the state on the day laid in the indictment. But this court held that his proof was not sufficient to overcome the *prima facie* case made by the warrant, and, on the point we are calling attention to, said:

"It was incumbent upon him" (the accused), "by competent proof, to rebut the presumption arising on the face of the extradition warrant and requisition papers that he was a fugitive from justice for a crime committed in Wisconsin on September 30, 1905." (Our italics.)

In *Strassheim vs. Daily*, 221 U. S., 280, Daily had been indicted in Michigan for bribery and also for obtaining money from the state by false pre-

tenses. A requisition had been issued to the governor of Illinois who had issued his warrant for Daily's arrest. The United States District Court granted Daily a writ of habeas corpus, and, after a hearing, discharged him on the ground that the facts alleged in the indictment did not constitute a crime against the laws of Michigan. This court overruled that holding and held that Daily should be delivered to the agent of the state of Michigan because it was proved that he had been guilty of overt acts done in Michigan toward the alleged crime although the actual payment of the bribe may have been made elsewhere.

The indictment charged that on May 13, 1908, Daily bribed one, Armstrong, who was connected with the Michigan State Prison as Warden. Daily contended he had not been in Michigan at the time laid in the indictment and therefore could not be extradited. He had had a conversation with Armstrong in Chicago prior to July 22, 1907, at which he had said it was a mistake not to have accepted a proposition he had made for the sale of certain second-hand machinery which he desired to palm off on the board of control of the prison with which Armstrong was connected; that he thought it could be arranged and there would be a nice present in it for Armstrong, which Daily said would be one thousand dollars anyway.

On July 22, 1907, a bid signed by Daily was sent in and he was with the board of control in Michigan, accompanying it, when it was considered and accepted. He had made a previous visit to the board in the spring, and he was there in November to see the machinery and delay shipment. At the latter date, he saw Armstrong in Michigan and

had a conversation with him relating to the subject. Finally, in April, 1908, Daily was at the prison again, and, in further execution of the program arranged by him and Armstrong, the contract price was paid in full. Daily paid Armstrong fifteen hundred dollars, as he had agreed. This Court said:

"If a jury should believe the evidence, and find that Daily did the acts that led Armstrong to betray his trust, deceived the board of control, and induced by fraud the payment by the state, the usage of the civilized world would warrant Michigan in punishing him, although he never had set foot in the state until after the fraud was complete. Acts done outside a jurisdiction, but intended to produce and producing detrimental effects within it, justify a state in punishing the cause of the harm as if he had been present at the effect, if the state should succeed in getting him within its power. *Com vs. Smith*, 11 Allen, 243, 256, 259; *Simpson vs. State*, 92 Ga., 41, 22 L. R. A., 248; *American Banana Co. vs. United Fruit Co.*, 213 U. S., 347, 356. We may assume therefore, that Daily is a criminal under the Law of Michigan.

Of course, we must admit that it does not follow that Daily is a fugitive from justice. *Hyatt vs. New York*, 188 U. S., 691, 712. On the other hand, however, we think it plain that the criminal need not do within the state every act necessary to complete the crime. *If he does there an overt act which is and is intended to be a material step toward accomp-*

lishing the crime, and then absents himself from the state and does the rest elsewhere, he becomes a fugitive from justice when the crime is complete, if not before. Re Cook, 49 Fed., 833, 843, 844; Ex parte Hoffatol, 180 Fed., 240, 243; Re Sultan, 115 N. C., 57. For all that is necessary to convert a criminal under the laws of a state into a fugitive from justice is that he should have left the state after having incurred guilt there (Robert vs. Reilly, 116 U. S., 80), and his overt act becomes retrospectively guilty when the contemplated result ensues. Thus, in this case, offering the bid and receiving the acceptance were material steps in the scheme, they were taken in Michigan, and they were established in their character of guilty acts when the plot was carried to the end, even if the intent with which those steps were taken did not make Daily guilty before." (Our italics.)

This language clearly recognizes that a citizen of one state cannot be forcibly taken for trial in another state upon the mere finding of an indictment, laid at a time when the accused chanced to be in the demanding state on innocent business or pleasure. Something more is required. There must be an overt act done in the demanding state in pursuit of the alleged crime and the commission of the overt act must be proved. Mere suspicion and accusation are not enough to support rendition when the proceedings for the delivery of the accused to the demanding state are challenged in the courts.

In *Biddinger vs. Commissioner of Police*, 245 U. S., 128, Biddinger was charged with having committed crimes in the state of Illinois at various times between the fifteenth of October, nineteen hundred and eight, and the second of September, nineteen hundred and ten. The governor of Illinois demanded his extradition from New York as a fugitive from justice and Governor Hughes, after according a full hearing, made a careful decision and issued to the Commissioner of Police of the City of New York an executive warrant for Biddinger's arrest, by which the agent of Illinois was authorized to receive and convey him to that state. Biddinger obtained a writ of habeas corpus from the United States District Court, which writ was discharged and an appeal taken to this court. Admitting that he was in the state of Illinois at the time it was charged he had committed crimes there, Biddinger showed that he had resided there openly and continuously for more than three years after the dates on which he was charged with having committed the crimes in Illinois and claimed that therefore he could not have been a fugitive from justice.

This court, after reviewing the history of the provision of the Constitution, held that the rendition clause was intended to reach all persons, who, *having committed a crime in one state, go to another*, citing *Roberts vs. Reilly* and *Applegard vs. Massachusetts* and other cases, and quoting the passage from the *Applegard case* which we have quoted above. Governor Hughes heard and disposed of the application for rendition in an able manner and this court was undoubtedly favorably impressed thereby. But we do not always have men of the

intelligence, independence and faithfulness of Governor Hughes in the capitols of our states. There is a political office and such matters are usually handled carelessly, as mere routine, or are subject to political pressure. Not so the courts. The same person who may be subject to political pressure in the one office may be impartial and fearless in the other. It is due to a difference of atmosphere and traditions and the right of review which always obtains in the courts.

The Biddinger case is the last one decided here and is in accord with all of the other cases upon the point we are contending for. The indictment must charge the accused with having committed a crime within the state demanding him and an overt act must be shown to have been committed by him in the demanding state before he can be forcibly taken from his home for trial elsewhere. It is not within the purpose of the Constitutional provision, nor within its interpretation by this court that one may be charged with a crime, without any place specified and without proof of an overt act and taken for trial to another state; in fine, there must be evidence, constituting more than bare suspicion and loose accusation, before one can be so removed.

Unless an indictment charging crime within the demanding state, together with proof of an overt act toward its commission is required, when challenged, it will not be safe for people engaged in competitive business to travel to other states. One would never know when a vague charge of conspiracy, reaching back, perhaps for years, to a time when he had chanced to be in the rival state might be put forward as a means of coercion in some later controversy.

It is common knowledge that an influential resident can readily procure an indictment against a rival non-resident. If a mere charge of conspiracy is to be sufficient to procure extradition, provided one has ever been so unfortunate as to have visited another state, interstate travel will become a perilous adventure for some very worthy but ambitious citizens.

POINT II.

The appellant may be lawfully tried in New York for receiving funds alleged to have been stolen by Hanson and sent to Hogan, without violating the limitations of the rendition clause of the constitution as established by the uniform decisions of this court.

At such a trial, the appellant entertains full confidence he will be able to establish his innocence. He seriously objects to be taken to Massachusetts for trial there, where the indictment for conspiracy may furnish a dragnet for evidence of doubtful character and where prejudice against the stock brokerage business may be sufficient to lead to his conviction on circumstantial and doubtful evidence, although he is innocent of any crime, and where he will have great difficulty in procuring bail.

A recent case, decided by the Court of Appeals of New York in 1919, holds that one may be tried in New York for receiving stolen property with a liberality that makes it possible to bring every

guilty person to justice. Money drawn from a bank in New York was considered to be the original money stolen, although a mere credit memorandum of the money stolen in Pennsylvania had been deposited and other money withdrawn. One party to the transaction obtained a credit in Philadelphia upon securities stolen in New York and deposited the credit memorandum in a trust company in New York and afterward drew money representing part of the credit and gave the money to a third person who knew about the transaction and how the credit was obtained. It was held that the third person, accepting the money and knowing of the theft, was guilty of receiving stolen property.

People ex rel. Briggs vs. Hanley, 226 N. Y., 453.

This decision affords a most liberal scope for the trial of the crime of receiving stolen property. Is it not better that the prosecution of the appellant herein, if there must be one, should be in New York, without changing the construction of the constitutional provision, than that Hogan should be taken to Massachusetts under circumstances that will require the overthrow of the established interpretation of the rendition clause of the Constitution? If the extradition order appealed from shall be upheld, then, as we have already pointed out, anyone can be dragged to prison in a distant state on a loose charge of conspiracy by antedating the charge to a time when the accused chanced to be in the demanding state and without any proof that he is in fact a fugitive from justice.

In a case decided by the United States District Court for the Western District of Michigan, in 1878, Judge Withey, District Judge, said:

"The importance of adhering to the views expressed," (that one should be discharged on *habeas corpus* unless it is made to appear that he is, in fact, a fugitive from justice) "could be made apparent by referring to many cases where indictments have been found in one state upon no evidence or upon wholly insufficient evidence, and where the indictment subserved no end of justice. We have in mind an indictment found in a neighboring state against a citizen of Michigan upon wholly insufficient evidence inspired by revenge and black-mailing purposes. * * * We noticed in the papers of an adjoining state, not long since, that one or more indictments had been found by a grand jury without any evidence whatever, on request of a prosecuting officer.

"Such cases, considering the facility with which indictments are sometimes obtained, afford sufficient justification not only to the executive of a state on whom a demand for extradition is made, but to the courts to see that the case falls within the laws."

Re Jackson, 2 Flip., 183; Federal Cases No. 7, 125.

In *ex parte Smith*, decided by the United States Circuit Court for the District of Illinois, in 1843, Judge Pope said:

"From this case," (*Tyrrel vs. Wilde*, an early English case, involving a prosecution under the law which made it a crime to abet frequenters of conventicles) "it appears that suspicion does not warrant a commitment, and that all legal intendments are to avail the prisoner. That the return is to be most strictly construed in favor of liberty. If suspicion in the foregoing case did not warrant a commitment in London by its officers, of a citizen of London, might not the objection be urged with greater force against a commitment of a citizen of our state, to be transported to another on suspicion? No case can arise demanding a more searching scrutiny into the evidence, than cases arising under this part of the Constitution of the United States. It is proposed to deprive a freeman of his liberty—to deliver him into the custody of strangers, to be transported to a foreign state, to be arraigned for trial before a foreign tribunal, governed by laws unknown to him—separated from his friends, his family and his witnesses, unknown and unknowing. Had he an immaculate character, it would not avail him with strangers. Such a spectacle is appalling enough to challenge the strictest analysis. The framers of the Constitution were not insensible of the importance of courts possessing the confidence of the parties. They therefore provided that the citizens of the different states might resort to the federal courts in civil causes.

"How much more important that the criminal have confidence in his judge and jury?" (3 McLean, 121; Federal Cases No. 12,968.)

While this language may sound somewhat exaggerated it really expresses the fears of one who, though innocent, is actually threatened with rendition. The matter of procuring bail, obtaining and consulting counsel, the feeling that one is a stranger in another state and unfamiliar with the courts and procedure are all very real to the one who faces the predicament.

POINT III.

Rendition ought not to be left to the governors of the states, where, when contested, it will depend upon political expediency. The present system has stood the test of time and the trial of the slavery issue and war. The suggested change would be an innovation. *Obsta principiis* is a safe and wise maxim.

The constitutional provision governing interstate rendition was meant to serve the ends of justice. This court has always so interpreted it and has maintained the jurisdiction of the courts.

As it is now, the governors may, and often do, avoid all political pressure, by doing as was done in this case, leave the contested hearing to the courts. People have confidence in the courts. They have the feeling, which is fully justified, that they will have a fair hearing there in accordance with established forms and the right to appeal to a higher court in cases of doubt or difficulty. But the people do not have the same confi-

dence in political officers for reasons that are obvious. The difference in the manner in which such a question is approached and handled by the governor's office is one consideration. Again expediency counts heavily, especially if the governor is ambitious and desires to become, say, a United States Senator and happens to be very busy about that at the time the rendition application is made to him. Language used by Judge Jenkins of Wisconsin, in a *habeas corpus* case brought before him in 1892 is applicable.

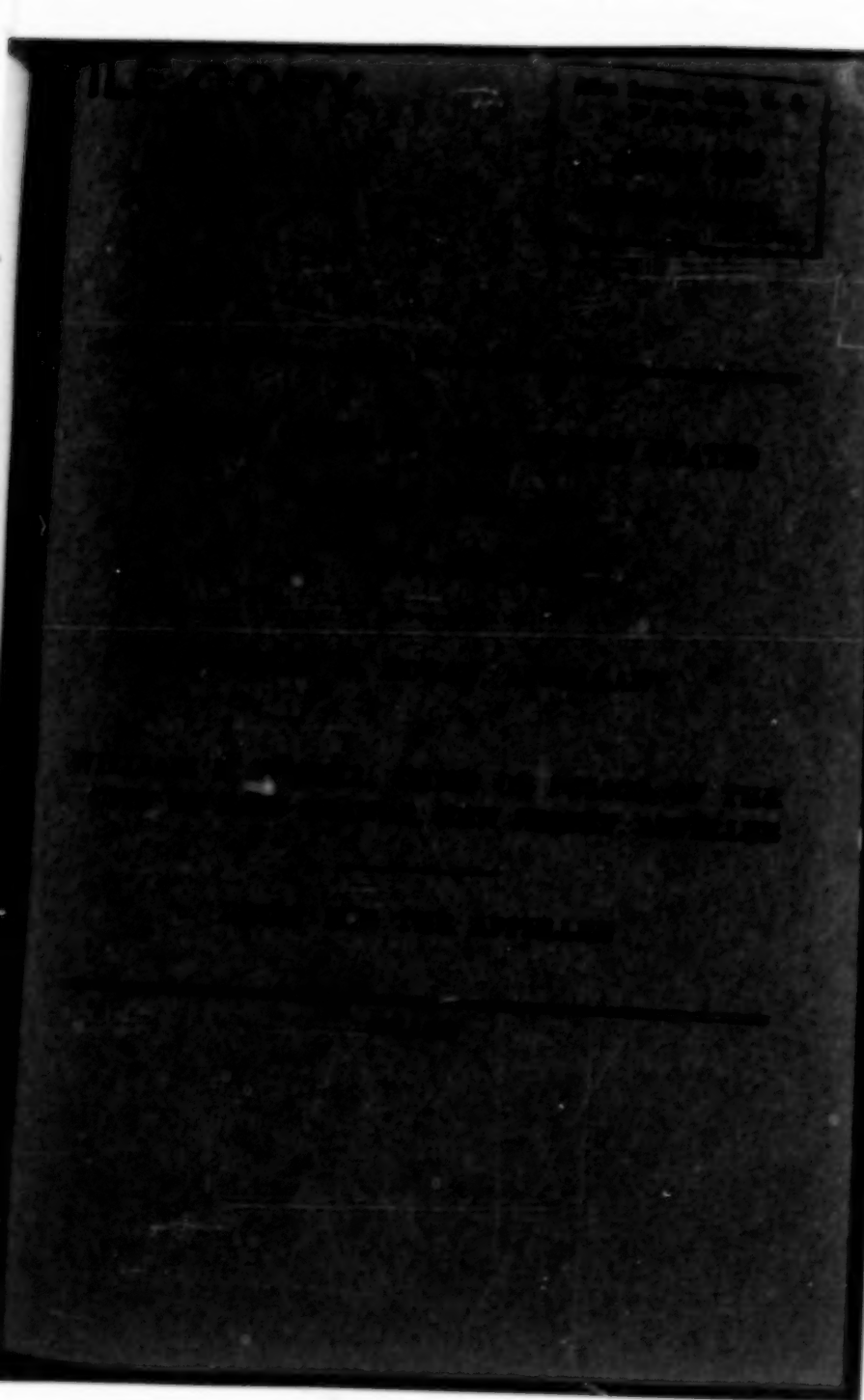
"Surely," he said, "it cannot be claimed that such action" (of the governor) "is conclusive upon personal right, and may not be inquired of by judicial tribunals. Surely it cannot be that right to personal liberty hangs upon so slender a thread as the arbitrary will of the authorities of the demanding and surrendering states." *In re Cook*, 49 Fed Rep., 833, 839.

POINT IV.

The order appealed from should be reversed.

Respectfully submitted,

REUBEN D. SILLIMAN,
Counsel for Appellant.



SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1919

No. 399

CHARLES K. HOGAN, APPELLANT

v.

WILLIAM H. O'NEILL, CHIEF OF POLICE OF THE
CITY OF EAST ORANGE, NEW JERSEY, APPELLEE

BRIEF FOR THE APPELLEE

STATEMENT OF THE CASE

The appellant, who is hereinafter referred to as the defendant, was jointly indicted with one Hanson by the Grand Jury of Suffolk County, Massachusetts, in an indictment that charged the defendant and said Hanson with the crime of conspiracy to steal the property, money, goods and chattels of the Market Trust Company, a banking corporation legally established and existing within the said County of Suffolk, on the eighteenth day of August, 1916.

The defendant at some time after the said eighteenth day of August, 1916, left the Commonwealth of Massachusetts and returned to the State of New Jersey where he had his permanent home.

A demand by the Governor of Massachusetts was duly made upon the Governor of New Jersey asking for the rendition of the defendant and on the twenty-first day of February, 1919,

the Governor of New Jersey issued his warrant to the respondent herein authorizing and requiring him to take the defendant into custody and to deliver him forthwith to James R. Claffin, the duly appointed agent of Massachusetts, for the purpose of effecting the rendition of the defendant to the Commonwealth of Massachusetts, and thereafter on the first day of March, 1919, the defendant filed a petition in the District Court of the United States for the District of New Jersey for a writ of *habeas corpus* asking that he be released from the custody of the respondent in whose custody he then was by virtue of said warrant of the Governor of New Jersey.

In a hearing upon said petition for the writ of *habeas corpus* the same was dismissed by the Court for the reasons assigned in the opinion of the Court as set forth in the record.

The case involves two issues:

- (1) As to whether or not the defendant was a fugitive from justice from the Commonwealth of Massachusetts; and
- (2) Whether or not the defendant was properly charged with crime in Massachusetts. *

The testimony pertinent to the issues raised by the assignment of error briefly was as follows:

At the hearing upon the petition the defendant admitted upon the witness stand that he was in the Commonwealth of Massachusetts at or about the date set forth in the indictment as the time when the crime was alleged to have been committed.

There was no evidence that the defendant committed in Massachusetts any overt act in pursuance of the objects of the alleged conspiracy.

The defendant admitted the receipt on his return to New Jersey of various checks amounting in the aggregate to \$22,451 from Hanson, the person with whom he was jointly indicted.

ARGUMENT

I

The defendant having admitted that on or about the time the indictment alleges the crime was committed he was in the Commonwealth of Massachusetts in company with the codefendant Hanson and that thereafter he departed from the said Commonwealth establishes beyond contradiction that he is a fugitive from the justice of the Commonwealth of Massachusetts.

Roberts v. Reilly, 116 U. S. 80.

Munsey v. Clough, 196 U. S. 364.

Appleyard v. Massachusetts, 203 U. S. 22.

Drew v. Thaw, 235 U. S. 432.

II

In the Commonwealth of Massachusetts the crime of conspiracy is complete upon the making of the unlawful agreement irrespective of whether or not any overt act is thereafter performed for the purpose of carrying out the conspiracy.

Com. v. Judd, 2 Mass. 329, 337.

Com. v. Tibbetts, 2 Mass. 536, 538.

Com. v. Warren, 6 Mass. 74.

Com. v. Hunt, 45 Mass. (4 Metcalf) 111.

Com. v. Rogers, 181 Mass. 184, 191.

Com. v. Stuart, 207 Mass. 563.

III

The indictment in this case was in the form prescribed by the statutes of the Commonwealth of Massachusetts in such case made and provided.

Revised Laws of Massachusetts, ch. 218, s. 67.

IV

The accusation on which the requisition is based will not be scrutinized with technical accuracy. If it charges a crime substantially, the determination of its technical sufficiency as a pleading must be referred to the courts of the demanding state.

Roberts v. Reilly, 116 U. S. 80.

Re Roberts, 24 Federal, 132.

Re Vorhees, 32 N. J. 141.

V

This Court has decided that it will take judicial notice of the laws of the demanding state in rendition cases.

Roberts v. Reilly, 116 U. S. 80.

VI

It is provided by the statutes of the Commonwealth of Massachusetts that the allegation of place in the caption shall be considered as an allegation that the act was committed within the territorial jurisdiction of the court.

Revised Laws of Massachusetts, ch. 218, s. 20.

"The time and place of the commission of the crime need not be alleged unless it is an essential element of the crime. The allegation of time in the caption shall, unless otherwise stated, be considered as an allegation that the act was committed before the finding of the indictment, after it became a crime, and within the period of limitations. The name of the county and court in the caption shall, unless otherwise stated, be considered as an allegation that the act was committed within the territorial jurisdiction of the court. All allegations of the indictment shall, unless otherwise stated, be considered to refer to the same time and place."

It is respectfully submitted that the decision of the Court discharging the writ of *habeas corpus* and remanding the defendant to the custody of the respondent was in accordance with the evidence and the law and that no prejudicial error was made and that therefore the judgment of the District Court should be affirmed.

Respectfully submitted,

JOSEPH C. PELLETIER,

*District Attorney for the Suffolk
District, Commonwealth of
Massachusetts.*

WILLIAM S. KINNEY,

*Assistant District Attorney for the
Suffolk District, Commonwealth
of Massachusetts.*

SUPREME COURT OF THE UNITED STATES.

No. 120.—OCTOBER TERM, 1920.

Charles K. Hogan, Appellant,	}	Appeal from the District Court of the United States for the District of New Jersey.
vs.		
William H. O'Neill, Chief of Police of the City of East Orange, New Jersey,		

[January 31, 1921.]

Mr. Justice PITNEY delivered the opinion of the Court.

This is an appeal from a final order of the District Court discharging a writ of *habeas corpus* and remanding appellant to the custody of appellee for rendition to a representative of the Commonwealth of Massachusetts, pursuant to a warrant issued by the Governor of New Jersey under sec. 5278 Rev. Stat. U. S.

Upon the hearing before the District Court on return of the *habeas corpus*, it appeared that a demand for appellant's apprehension and extradition to Massachusetts had been made by the Governor of that Commonwealth upon the Governor of New Jersey, accompanied with a copy of an indictment found by the grand jury of Suffolk County, certified as authentic by the Governor of Massachusetts, and an affidavit to the effect that appellant was in the Commonwealth for some time previous to and at the time of the commission of the alleged crime, and afterwards fled therefrom.

The following is a copy of the indictment. (signatures omitted):

"Commonwealth of Massachusetts, Suffolk, ss:

"At the Superior Court Begun and Holden at the City of Boston, within and for the County of Suffolk, for the Transaction of Criminal Business, on the First Monday of February, in the Year of our Lord One Thousand Nine Hundred and Nineteen.

"The Jurors for the Commonwealth of Massachusetts, on their oath present that Charles K. Hogan and Luther R. Hanson on the eighteenth day of August in the year of our Lord one thousand nine hundred and sixteen conspired together to steal the property,

moneys, goods and chattels of the Market Trust Company, a banking corporation legally established and existing."

It appeared that since the month of May, 1915, appellant had resided continuously at East Orange, New Jersey; but he admitted that in the summer of 1916—he said he could not remember the date—he visited Boston and spent some time in the company of Hanson, the alleged co-conspirator.

It is objected that the indictment does not charge appellant with the commission of a crime in Massachusetts; but when it is read in the light of the laws of that Commonwealth the difficulty disappears. Revised Laws of Massachusetts, Ch. 218, sec. 20, reads thus: "The time and place of the commission of the crime need not be alleged unless it is an essential element of the crime. The allegation of time in the caption shall, unless otherwise stated, be considered as an allegation that the act was committed before the finding of the indictment, after it became a crime, and within the period of limitations. The name of the county and court in the caption shall, unless otherwise stated, be considered as an allegation that the act was committed within the territorial jurisdiction of the court. All allegations of the indictment shall, unless otherwise stated, be considered to refer to the same time and place." Of course the courts of the United States will take notice of the laws of the demanding State, as the Governor of New Jersey was at liberty to do. *Roberts v. Reilly*, 116 U. S. 80, 96.

Were there any doubt of the sufficiency of the indictment, as a pleading, it would not be open to inquiry on *habeas corpus*. *Munsey v. Clough*, 196 U. S. 364, 373.

The suggestion that there is neither allegation nor proof of an overt act done by appellant in Massachusetts pursuant to the alleged conspiracy is without weight. By the law of Massachusetts, as by the common law, a conspiracy to commit a crime is itself a criminal offense, although no overt act be done in pursuance of it; such acts, however important as evidence of conspiracy or as matters of aggravation, not being of the essence of the offense, since there is no statute making criminality dependent upon the commission of an overt act. *Commonwealth v. Judd*, 2 Mass. 329, 337; *Commonwealth v. Tibbetts*, 2 Mass. 536, 538; *Commonwealth v. Warren*, 6 Mass. 74; *Commonwealth v. Hunt*, 4 Metc. 111, 125.

Appellant being charged by authentic indictment with a criminal offense committed in Massachusetts on or about August 18, 1916,

and having, by his own admission, been personally present there and in communication with the alleged co-conspirator at or about that time, and being afterwards found in the State of New Jersey, there is adequate ground for his return as a fugitive from justice under sec. 5278 Rev. Stat. U. S., enacted to give effect to Art. IV, sec. 2, of the Constitution. Whether in fact he was a fugitive from justice was for the determination of the Governor of New Jersey. The warrant of arrest issued in compliance with the demand of the Governor of Massachusetts shows that he found appellant to be a fugitive; and this conclusion must stand unless clearly overthrown, which appellant has not succeeded in doing. To be regarded as a fugitive from justice it is not necessary that one shall have left the State in which the crime is alleged to have been committed for the very purpose of avoiding prosecution, but simply that, having committed there an act which by the law of the State constitutes a crime, he afterwards has departed from its jurisdiction and when sought to be prosecuted is found within the territory of another State. *Roberts v. Reilly*, 116 U. S. 80, 95-97; *Munsey v. Clough*, 196 U. S. 364, 372-375; *Appleyard v. Massachusetts*, 203 U. S. 222, 227, *et seq.*; *McNichols v. Pease*, 207 U. S. 100, 108-109; *Biddinger v. Commissioner of Police*, 245 U. S. 128, 133-134.

Final order affirmed.

A true copy.

Test:

Clerk Supreme Court, U. S.